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ROSENMAN & COLIN

1300 19TH STREET, N.W., WASHINGTON, D. C. 20036

TELEPHONE (202) 463-7177

TELECOPIER (202) 429-0046

Federal Communications Commission
Office of the Secretary

SAMUEL I. ROSENMAN (1896-1973)
RALPH F. COLIN (1900-1985)

HOWARD J. BRAUN

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585
TELEPHONE (212) 940-8800

December 20, 1991

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

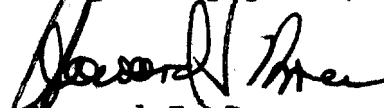
Re: MM Docket No. 87-268
Notice of Proposed Rulemaking
Advanced Television Systems

Dear Ms. Searcy:

On behalf of our client, Island Broadcasting Co., transmitted herewith for filing are an original and nine (9) copies of its "COMMENTS" in the above-referenced matter.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,



Howard J. Braun

Enc.

cc: Keith Larson, Chief (FCC - By Hand)
Mary M. Fitzgerald, Esq. (FCC - By Hand)
Regina Harrison (FCC - By Hand) (all w/enc.)

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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

Howard J. Braun, Esq.
Jerold L. Jacobs, Esq.

Rosenman & Colin
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036

Its Attorneys

Dated: December 20, 1991

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
I. Introduction.....	1
II. A Five-Year Limit on Application and Construction Periods Should be Adopted.....	2
A. Five-Year Limit is Fully Adequate.....	2
B. Very Strict Construction Permit Extension Policy Is Necessary.....	4
C. Financial Qualifications and Firm Financial Commitment Should be Required.....	4
III. Commission Should Adopt An Unpaired Table of Allotments.....	5
A. "Unpaired" Table of Allotments Has Regulatory and Public Interest Benefits.....	5
B. Two Priorities in Designing Table of Allotments and Assigning Allotted Channels to ATV Applicants Are Proposed.....	6
IV. Conclusion.....	7

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In the Matter of)
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and Their Impact upon the) MM Docket No. 87-268
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TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO. ("Island"), licensee of Low Power Television ("LPTV") Stations W38AM, Long Island City, New York, W44AI, Plainview, Hicksville, and Mineola, New York, and W54AY, Brownsville, New York, by its attorneys, and pursuant to §1.415 of the Commission's Rules, hereby submits its Comments in the above-captioned rulemaking proceeding, which was initiated by Notice of Proposed Rulemaking ("NPRM"), FCC 91-337, released November 8, 1991. In support whereof, the following is shown:

I. INTRODUCTION

1. Since 1985, Island has been providing a diverse array of live creative LPTV programming to ethnic and minority viewing audiences in the New York City metropolitan area and Long Island via what are now three LPTV stations. Island is received on local television sets on UHF Channels 38 (W38AM, Long Island City, NY), 44 (W44AI, Plainview, Hicksville, and Mineola, NY), and 54 (W54AY, Brownsville, NY). In addition, Island's Technical Director and partner, Richard D. Bogner, is well-known as a master designer and

former manufacturer of broadcast antennas (the "Bogner" in Bogner Broadcast Equipment Corp.). Mr. Bogner also has participated in Commission rulemaking and broadcast application proceedings and in broadcast trade association advisory groups for many years.

2. Island's Comments on how best to integrate advanced television ("ATV") into the existing television broadcast service -- the essential thrust of the NPRM -- reflect a combination of Island's practical experience as an LPTV licensee and of Mr. Bogner's extensive technical involvement with the entire broadcast spectrum. Island specifically focuses on two issues:

- (1) Limited application and construction periods for ATV implementation (Section II(C) of the NPRM); and
- (2) ATV channel assignments using an "unpaired" Table of Allotments (Section III of the NPRM).

As Island will now demonstrate, the final ATV rules should be fashioned to ensure the rapid implementation of ATV with full consideration to the least displacement and dislocation of licensed and regularly broadcasting LPTV stations.

II. A FIVE-YEAR LIMIT ON APPLICATION AND CONSTRUCTION PERIODS SHOULD BE ADOPTED

A. Five-Year Limit is Fully Adequate

3. Paragraphs 11 and 14 of the NPRM propose that existing broadcasters will be given three years from the time that an ATV allotment table is adopted to apply for a construction permit for an ATV channel and two years from the date of a construction permit

grant to either build the ATV facilities or forfeit the permit. Island strongly endorses both time limitations for the reasons stated by the Commission: "to ensure that assigned spectrum does not lie fallow for an inordinate period of time" (§14) and "not...to unduly compromise...[the Commission's] desire to minimize delays in bringing ATV service to the public" (§11).

4. It is clear from the Commission's determination to "soon ...bring the benefits of advanced television technology to the public" stretching back to the August 20, 1987 Notice of Inquiry in this proceeding, 2 FCC Rcd 5125, 5138 (1987), as well as from the NPRM itself, that the Commission wishes to expedite the implementation of ATV. Yet, four and one-half years have already passed. If six months are allowed for the completion of this proceeding, including the adoption of an ATV table of allotments, and five years for applying for and building ATV facilities, it will be more than 10 years since the Commission began its ATV investigation.

5. Surely this is ample time for broadcasters to determine whether they wish to avail themselves of ATV technology and to follow through. Importantly, the NPRM does not forever bar a dilatory broadcaster from ATV if it does not act promptly. It merely causes "existing broadcasters...[to] forfeit their priority status" as against other qualified applicants -- an appropriate penalty and incentive for broadcasters to act expeditiously.

**B. Very Strict Construction Permit
Extension Policy Is Necessary**

6. Given the public importance in expeditious initiation of ATV, Island urges that the Commission should not allow any extensions of time to construct after the initial two-year permit has expired, absent the most extraordinary showing of good cause. This standard is akin to the Common Carrier Bureau's very strict application of the construction permit extension standards of §22.43(b) of the Rules in the Cellular Radio Service, where, as a practical matter, construction permit extensions are hardly ever granted. Island believes that such stringency is necessary to ensure that ATV applicants are serious about their ATV intentions and will construct promptly, as well as to reduce the period of uncertainty for any potentially displaced LPTV station.

**C. Financial Qualifications and Firm Financial
Commitment Should Be Required**

7. For the same reason, Island strongly commends the proposal in Paragraphs 22-23 of the NPRM to adopt a financial qualification showing as a condition for awarding an ATV channel and to apply a "firm financial commitment" standard for this showing (Para. 23), which is stricter than the present "reasonable assurance" standard applied to broadcast applicants under Section III (Financial Qualifications) of FCC Form 301. Compare Shawn Phalen, 5 FCC Rcd 53 (Rev. Bd. 1990) (broadcast "reasonable assurance" standard) with §22.917(b) ("firm financial commitment" standard for demonstrating financial qualifications in the Cellular

Radio Service). As Paragraph 22 suggests, having a financial qualification requirement and making it rigorous will minimize the possibility of an ATV channel being assigned to a broadcaster who is incapable or unwilling to promptly begin construction of an ATV facility or diligently carry it to completion. Thus, the proposed financial requirement will help ensure efficient and expeditious ATV implementation.

III. COMMISSION SHOULD ADOPT AN UNPAIRED TABLE OF ALLOTMENTS

A. "Unpaired" Table of Allotments Has Regulatory and Public Interest Benefits

8. Island supports the adoption of a "unpaired" Table of Allotments in this proceeding (Paragraph 19 of the NPRM), with no pre-application pairing of NTSC and ATV allotments being made. The most significant regulatory and public interest advantage of an "unpaired" Table appears after the Table is adopted and applicants for an ATV channel in a community provide a preference list of the available channels (as envisioned in Paragraph 19). At that point, the absence of NTSC-ATV pairing permits the Commission --when matching applicant preferences to the Table -- to ensure that all available but unoccupied channels in the community are distributed to applicants before channels occupied by licensed and regularly broadcasting LPTV stations are implicated.

B. Two Priorities in Designing Table of Allotments and Assigning Allotted Channels to ATV Applicants Are Proposed

9. When constructing the initial ATV Table of Allotments and matching the channel preferences of ATV applicants with the Table in a given community of license, Island urges that the Commission should use two allotment and assignment priorities (see below) to avoid the unnecessary displacement of LPTV licensees in those communities in which there are not sufficient unoccupied channels available to produce an initial Table of Allotments without including channels already occupied by LPTV station licensees. Although potential displacement of LPTV stations is primarily discussed in Section IV of the NPRM ("Spectrum Issues"), Island raises it here because it believes that the matter is integrally related to the question of how the ATV Table of Allotments should be constructed and how assignments should be made thereafter.

10. Island's two proposed allotment and assignment priorities, to be used in sequential order when the initial Table of Allotments is prepared and when assignments are later made to ATV applicants in each community of license, are as follows:

FIRST, the Commission should allot all channels that are not occupied by a licensed and regularly broadcasting LPTV station; and

SECOND, the Commission may allot (displace), if necessary, any channel occupied by a licensed and regularly broadcasting LPTV station in the community of license in question in the inverse order of original date of license of such LPTV stations.

Island maintains that it is inefficient, economically wasteful, and contrary to the public interest to displace a licensed and

regularly broadcasting LPTV station when assigning ATV channels unless all channels not so employed are already in use for ATV.

Moreover, if displacement of an LPTV station appears necessary in the allotment or assignment process, Island submits that potentially displaced LPTV stations should be selected in inverse order of original date of license, with the newest licensed and regularly broadcasting LPTV station being selected first (the "last in, first out" method).

11. Finally, when an LPTV station becomes a candidate for displacement, due to the ATV allotment or assignment process, Island is pleased to note (Paragraph 32 of the NPRM) that the Commission intends to continue the liberal channel substitution policies that it adopted in the Report and Order in MM Docket No. 86-286, 2 FCC Rcd 1278 (1987). In this regard, where more than one LPTV station is identified for displacement in a community of license, Island urges that the earliest licensed and regularly broadcasting LPTV station should be given first priority in selecting a substitute channel.


IV. CONCLUSION

WHEREFORE, in light of the foregoing, Island respectfully requests that the Commission should adopt ATV rules which: (1) place a five-year limit on the amount of time allowed for existing broadcasters to file for and construct their ATV facilities; and

(2) employ two recommended priorities for allotting and assigning
ATV channels, using an "unpaired" Table of Assignments.

Respectfully submitted,

ISLAND BROADCASTING CO.

By 
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-7177

Its Attorneys

Dated: December 20, 1991

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